

## Surface Transportation Board, DOT

## § 1111.9

### § 1111.5 Motions to dismiss or to make more definite.

An answer to a complaint or cross complaint may be accompanied by a motion to dismiss the complaint or cross complaint or a motion to make the complaint or cross complaint more definite. A motion to dismiss can be filed at anytime during a proceeding. A complainant or cross complainant may, within 10 days after an answer is filed, file a motion to make the answer more definite. Any motion to make more definite must specify the defects in the particular pleading and must describe fully the additional information or details thought to be necessary.

### § 1111.6 Satisfaction of complaint.

If a defendant satisfies a formal complaint, either before or after answering, a statement to that effect signed by the complainant must be filed (original only need be filed), setting forth when and how the complaint has been satisfied. This action should be taken as expeditiously as possible.

### § 1111.7 Investigations on the Board's own motion.

(a) *Service of decision.* A decision instituting an investigation on the Board's own motion will be served by the Board upon respondents.

(b) *Default.* If within the time period stated in the decision instituting an investigation, a respondent fails to comply with any requirement specified in the decision, the respondent will be deemed in default and to have waived any further proceedings, and the investigation may be decided forthwith.

### § 1111.8 Procedural schedule in stand-alone cost cases.

(a) *Procedural schedule.* Absent a specific order by the Board, the following general procedural schedule will apply in stand-alone cost cases:

Day 0—Complaint filed, discovery period begins.

Day 7 or before—Conference of the parties convened pursuant to § 1111.10(b).

Day 20—Defendant's answer to complaint due.

Day 75—Discovery completed.

Day 120—Complainant files opening evidence on absence of intermodal and intramodal competition, variable cost, and stand-alone

cost issues. Defendant files opening evidence on existence of product and geographic competition, and revenue-variable cost percentage generated by complainant's traffic.

Day 180—Complainant and defendant file reply evidence to opponent's opening evidence.

Day 210—Complainant and defendant file rebuttal evidence to opponent's reply evidence.

(b) *Conferences with parties.* (1) The Board will convene a technical conference of the parties with Board staff prior to the filing of any evidence in a stand-alone cost rate case, for the purpose of reaching agreement on the operating characteristics that are used in the variable cost calculations for the movements at issue. The parties should jointly propose a schedule for this technical conference.

(2) In addition, the Board may convene a conference of the parties with Board staff, after discovery requests are served but before any motions to compel may be filed, to discuss discovery matters in stand-alone cost rate cases. The parties should jointly propose a schedule for this discovery conference.

[61 FR 52711, Oct. 8, 1996; 61 FR 53996, Oct. 16, 1996, as amended at 63 FR 2639, Jan. 16, 1998; 68 FR 17313, Apr. 9, 2003]

### § 1111.9 Procedural schedule to determine whether to use simplified procedures.

Absent a specific order by the Board, the following procedural schedule will apply in determining whether to grant a request under § 1111.1(a) to use the simplified procedures (with the remainder of the procedural schedule to be determined on a case-by-case basis):

Day 0—Complaint filed, discovery period begins.

Day 20—Defendant's answer to complaint and opposition to use of simplified procedures due.

Day 30—Complainant's response to use of simplified procedures due.

Day 50—Board's determination of whether simplified procedures should be used.

[63 FR 2639, Jan. 16, 1998]

EFFECTIVE DATE NOTE: At 72 FR 51376, Sept. 7, 2007, § 1111.9 was revised, effective Oct. 7, 2007. For the convenience of the user the revised text is set forth as follows:

## § 1111.10

## 49 CFR Ch. X (10–1–07 Edition)

### § 1111.9 Procedural schedule in cases using simplified standards.

(a) *Procedural schedule.* Absent a specific order by the Board, the following general procedural schedules will apply in cases using the simplified standards:

(1) In cases relying upon the Simplified-SAC methodology:

Day 0—Complaint filed (including complainant's disclosure).

Day 10—Mediation begins.

Day 20—Defendant's answer to complaint (including defendant's initial disclosure).

Day 30—Mediation ends; discovery begins.

Day 140—Defendant's second disclosure.

Day 150—Discovery closes.

Day 220—Opening evidence.

Day 280—Reply evidence.

Day 310—Rebuttal evidence.

Day 320—Technical conference (market dominance and merits).

Day 330—Final briefs.

(2) In cases relying upon the Three-Benchmark method:

Day 0—Complaint filed (including complainant's disclosure).

Day 10—Mediation begins. (STB production of unmasked Waybill Sample.)

Day 20—Defendant's answer to complaint (including defendant's initial disclosure).

Day 30—Mediation ends; discovery begins.

Day 60—Discovery closes.

Day 90—Complainant's opening (initial tender of comparison group and opening evidence on market dominance). Defendant's opening (initial tender of comparison group).

Day 95—Technical conference on comparison group.

Day 120—Parties' final tenders on comparison group. Defendant's reply on market dominance.

Day 150—Parties' replies to final tenders. Complainant's rebuttal on market dominance.

(b) *Defendant's second disclosure.* In cases using the Simplified-SAC methodology, the defendant must make the following disclosures to the complainant by Day 170 of the procedural schedule.

(1) Identification of all traffic that moved over the routes replicated by the SARR in the Test Year.

(2) Information about those movements, in electronic format, aggregated by origin-destination pair and shipper, showing the origin, destination, volume, and total revenues from each movement.

(3) Total operating and equipment cost calculations for each of those movements, provided in electronic format.

(4) Revenue allocation for the on-SARR portion of each cross-over movement in the traffic group provided in electronic format.

(5) Total trackage rights payments paid or received during the Test Year associated with the route replicated by the SARR.

(6) All workpapers and documentation necessary to support the calculations.

(c) *Conferences with parties.* The Board may convene a conference of the parties with Board staff to facilitate voluntary resolution of discovery disputes and to address technical issues that may arise.

(d) *Complaint filed with a petition to revoke a class exemption.* If a complaint is filed simultaneously with a petition to revoke a class exemption, the Board will take no action on the complaint and the procedural schedule will be held in abeyance automatically until the petition to revoke is adjudicated.

### § 1111.10 Meeting to discuss procedural matters.

(a) *Generally.* In all complaint proceedings, other than those challenging the reasonableness of a rail rate based on stand-alone cost, the parties shall meet, or discuss by telephone, discovery and procedural matters within 12 days after an answer to a complaint is filed. Within 19 days after an answer to a complaint is filed, the parties, either jointly or separately, shall file a report with the Board setting forth a proposed procedural schedule to govern future activities and deadlines in the case.

(b) *Stand-alone cost complaints.* In complaints challenging the reasonableness of a rail rate based on stand-alone cost, the parties shall meet, or discuss by telephone, discovery and procedural matters within 7 days after a complaint is filed. The parties should inform the Board as soon as possible thereafter whether there are unresolved disputes that require Board intervention and, if so, the nature of such disputes.

[61 FR 52711, Oct. 8, 1996. Redesignated and amended at 63 FR 2639, Jan. 16, 1998]

EFFECTIVE DATE NOTE: At 72 FR 51376, Sept. 7, 2007, § 1111.10 was revised, effective Oct. 7, 2007. For the convenience of the user the revised text is set forth as follows:

### § 1111.10 Meeting to discuss procedural matters.

(a) *Generally.* In all complaint proceedings, other than those challenging the reasonableness of a rail rate based on stand-alone cost or the simplified standards, the parties shall meet, or discuss by telephone, discovery and procedural matters within 12 days after an answer to a complaint is filed. Within 19